

CODE OF THE COUNTY OF YORK

Chapter 10

EROSION AND SEDIMENT CONTROL*

CONTENTS

ARTICLE I. IN GENERAL..... 10 - 2

 Sec. 10-1. Purpose of chapter. 10 - 2

 Sec. 10-2. Definitions..... 10 - 2

 Sec. 10-3. Local erosion and sediment control program. 10 - 5

 Sec. 10-4. Conflicting requirements..... 10 - 5

 Secs. 10-5—10-10. Reserved..... 10 - 6

ARTICLE II. PLANS, PERMITS, STANDARDS AND INSPECTIONS..... 10 - 6

 Sec. 10-11. Regulated land-disturbing activities; contents, submission and approval
 of plans. 10 - 6

 Sec. 10-12. Required permits..... 10 - 8

 Sec. 10-13. Plan review and inspection fee..... 10 - 8

 Sec. 10-14. Issuance of permit and surety requirements..... 10 - 8

 Sec. 10-15. Term of permit. 10 - 9

 Sec. 10-16. Monitoring, reports, inspections, stop work orders, and revocation
 of permits..... 10 - 10

 Sec. 10-17. Certificate of completion of land-disturbing activity..... 10 - 11

 Sec. 10-18—10-25. Reserved..... 10 - 11

ARTICLE III. VIOLATIONS, PENALTIES AND APPEALS 10 - 11

 Sec. 10-26. Violations of chapter—Generally..... 10 - 11

 Sec. 10-27. Penalties, injunctions and other legal actions. 10 - 11

 Sec. 10-28. Appeals and judicial review. 10 - 12

(Ord. No. 02-7(R), 7/16/02)

*Cross reference—Building regulations, Ch. 7; sewers, Ch. 18.1; zoning ordinance, Ch. 24.1; subdivision ordinance, Ch. 20.5.

ARTICLE I. IN GENERAL

Sec. 10-1. Purpose of chapter.

It is the purpose of this chapter to prevent degradation of properties, stream channels, waters and other natural resources of the county by establishing requirements for the control of soil erosion, sediment deposition and nonagricultural runoff and by establishing procedures whereby these requirements shall be administered and enforced.

This chapter is authorized by the Code of Virginia, Title 10.1, Chapter 5, Article 4 (10.1-560 et seq.), known as the Erosion and Sediment Control Law.

Comment [JS1]: Page: 1
Section 10-1 of model

Sec. 10-2. Definitions.

For the purpose of this chapter, the following words and terms shall have the meanings ascribed to them in this section:

Agreement in lieu of a plan. A contract between the plan-approving authority and the owner which specifies conservation measures which must be implemented in the construction of a single-family detached dwelling; this contract may be executed by the plan-approving authority in lieu of a formal site plan.

Applicant. Any person submitting an erosion and sediment control plan for approval or requesting the issuance of a permit, when required, authorizing land-disturbing activities to commence.

Certified inspector. An employee or agent of the County who has been designated as such by the county administrator. A certified inspector shall (i) hold a certificate of competence from the Virginia Soil And Water Conservation Board in the area of project inspection or (ii) be enrolled in the Virginia Soil and Water Conservation Board's training program for project inspection and successfully complete such program within one year after enrollment.

Certified plan reviewer. A County employee or agent who has been designated as such by the county administrator. A certified plan reviewer shall (i) hold a certificate of competence from the Virginia Soil and Water Conservation Board in the area of plan review, (ii) be enrolled in the Virginia Soil and Water Conservation Board's training program for plan review and successfully complete such program within one year after enrollment, or (iii) be licensed as a professional engineer, architect, certified landscape architect or land surveyor pursuant to article 1 (Sec 54.1-400 et seq.) of chapter 4 of title 54.1 of the Code of Virginia, as it may be amended from time to time.

Certified program administrator. A County employee or agent designated as such by the county administrator. A certified program administrator shall (i) hold a certificate of competence from the Virginia Soil and Water Conservation Board in the area of program administration or (ii) be enrolled in the Virginia Soil and Water Conservation Board's training program for program administration and successfully complete such program within one year after enrollment.

Clearing. Any activity which removes the vegetative ground cover including, but not limited to, root mat removal or topsoil removal.

Code of Virginia. All references herein to the Code of Virginia are to the Code of Virginia (1950), as it may be amended from time to time.

Conservation plan, erosion and sediment control plan, or plan. A document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory, and management information with needed interpretation and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to assure that the entire unit or units of land will be so treated to achieve the conservation objectives.

County. The County of York.

County Administrator. The county administrator for York County, or his designee.

Department. The Virginia Department of Conservation and Recreation.

Director. The director of the Virginia Department of Conservation and Recreation.

District or soil and water conservation district. Refers to the Colonial Soil and Water District.

Erosion Impact area. An area of land not associated with current land-disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of 10,000 square feet or less used for residential purposes or to shorelines where the erosion results from wave action or other coastal processes.

Excavating. Any digging, scooping or other methods of removing earth materials.

Filling. Any depositing or stockpiling of earth materials.

Grading. Any excavating or filling of earth material or any combination thereof, including the land in its excavated or filled conditions.

Land-disturbing activity. Any land change which may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the Commonwealth, including, but not limited to clearing, grading, excavating, transporting and filling of land except that the term shall not include:

- (1) Minor land-disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work;
- (2) Individual service connections;
- (3) Installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard-surfaced road, street or sidewalk, provided the land-disturbing activity is confined to the area of the road, street or sidewalk which is hard-surfaced;
- (4) Septic tank lines or drainage fields unless included in an overall plan for land-disturbing activity relating to the construction of the building to be served by the septic tank system;
- (5) Surface or deep mining;
- (6) Exploration or drilling for oil and gas, including the well site, roads, feeder lines and off-site disposal areas;
- (7) Tilling, planting or harvesting of agricultural, horticultural or forest crops or livestock feedlot operations; including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 of Title 10.1 of the Code of Virginia (Sec 10.1-1100 et seq.) or is converted to bona fide agricultural or improved pasture use as described in Code of Virginia Sec 10.1-1163(B);
- (8) Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of a railroad company;
- (9) Agricultural engineering operations including but not limited to the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the Virginia Dam Safety Act (Article 2 of Chapter 6 of Title 10.1, Code of Virginia, Sec. 10.1-604 et seq.) ditches, strip cropping, lister furrowing, contour cultivation, contour furrowing, land drainage and land irrigation;
- (10) Disturbed land areas of less than two thousand five hundred (2,500) square feet in size;
- (11) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;

- (12) Shore erosion control projects on tidal waters when all of the land disturbing activities are within the regulatory authority of and approved by local wetlands board, the Marine Resources Commission or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this article and the regulations adopted pursuant thereto;
- (13) Emergency work to protect life, limb or property, and emergency repairs; provided that if the land-disturbing activity would have required an approved erosion and sediment control plan, if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the plan approving authority.

Land-disturbing permit. A permit issued by the County for the clearing, filling, excavating, grading, transporting of land or for any combination thereof for any purpose set forth herein.

Local erosion and sediment control program or local control program. All of the various methods employed by the County to regulate land-disturbing activities and thereby minimize erosion and sedimentation in compliance with the state program, which may include such items as local ordinances, policies and guidelines, technical materials, inspection, enforcement, and evaluation.

Minimum Standards. Those Minimum Standards contained within the Erosion and Sediment Control Regulations promulgated by the Virginia Soil and Water Conservation Board, as set out in 4VAC50-30-40 of the Virginia Administrative Code as they may be amended from time to time.

Owner. The owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm or corporation in control of a property.

Permittee. The person to whom a permit authorizing land-disturbing activities is issued or the person who certifies that the approved erosion and sediment control plan will be followed.

Person. Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town, or any other political subdivision of the state, any interstate body, or any other legal entity.

Plan-approving authority. The county administrator or his designee who is responsible for determining the adequacy of a conservation plan submitted for land-disturbing activities on a unit or units of lands and for approving plans.

Program authority. The County, which has adopted a soil erosion and sediment control program approved by the Virginia Soil and Water Conservation Board.

Regulations. All regulations promulgated by any local, state, or federal governmental agency having oversight and authority over the control of erosion and sedimentation resulting from land-disturbing activities, including (without limitation) the Erosion and Sediment Control Regulations and the Virginia Erosion and Sediment Control Handbook promulgated by the Virginia Soil and Water Conservation Board, as they may be amended from time to time.

Responsible Land Disturber. An individual from the project or development team, who will be in charge of and responsible for carrying out a land-disturbing activity covered by an approved plan or agreement in lieu of a plan, who (i) holds a Responsible Land Disturber certificate of competence, (ii) holds a current certificate of competence from the Virginia Soil and Water Conservation Board in the areas of Combined Administration, Program Administration, Inspection, or Plan Review, (iii) holds a current Contractor certificate of competence for erosion and sediment control or (iv) is licensed in Virginia as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article 1 (Sec. 54.1-400 et seq.) of chapter 4 of title 54.1 of the Code of Virginia, as it may be amended from time to time.

Single-family detached dwelling. A noncommercial one-family dwelling unit which is surrounded on all sides by yards or other open space located on the same lot and which is not attached to any other dwelling by any means. For purposes of the definition of a "single-family detached dwelling", the term "family" shall have the same meaning as is defined in the York County zoning ordinance, Chapter 24.1 of this Code.

State erosion and sediment control program or state program. The program administered by the Virginia Soil and Water Conservation Board pursuant to the Code of Virginia, including regulations designed to minimize erosion and sedimentation.

State waters. All waters on the surface and under the ground wholly or partially within or bordering the Commonwealth or within its jurisdiction.

Transporting. Any moving of earth materials from one place to another place other than such movement incidental to grading, when such movement results in destroying the vegetative ground cover either by tracking or the buildup of earth materials to the extent that erosion and sedimentation will result from the soil or earth materials over which such transporting occurs.

(Ord No. 03-14, 6/17/03)

Sec. 10-3. Local erosion and sediment control program.

- (a) Pursuant to section 10.1-562 of the Code of Virginia, the County hereby adopts the regulations, references, guidelines, standards and specifications (hereinafter "the Virginia Erosion and Sediment Control Regulations") and the Virginia Erosion and Sediment Control Handbook ("the Handbook") promulgated by the Virginia Soil and Water Conservation Board, as such may be amended from time to time, for the effective control of soil erosion and sediment deposition to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources. The Virginia Erosion and Sediment Control Regulations and the Handbook are sometimes referred to hereinafter as "the state program".
- (b) Before adopting regulations which are more stringent than the state program, the County shall give due notice and conduct a public hearing on the proposed or revised regulations. No public hearing shall be required when the County is amending the local control program to conform to revisions in the state program.
- (c) Pursuant to section 10.1-561.1 of the Code of Virginia, an erosion control plan shall not be approved until it is reviewed by a certified plan reviewer. Inspections of land-disturbing activities shall be conducted by a certified inspector.
- (d) The county administrator is hereby designated as the County's agent for the purpose of administering and enforcing the terms of this chapter. The agent is authorized to make such inspections as may be necessary to ensure compliance with the terms of this chapter, and any conditions of approval for specific projects and is authorized to take such steps as are provided by this chapter, and as may be necessary, to ensure compliance with its terms.
- (e) The county administrator is hereby designated as the plan approving authority for the purpose of this chapter and is authorized, on behalf of the county, to review and approve applications for permits under the terms of this chapter.
- (f) The County's Erosion and Sediment Control Program shall employ or retain one or more certified program administrators, one or more certified plan reviewers, and one or more certified inspectors. A single individual may be designated to perform more than one of such functions provided that the individual possesses the requisite qualifications.
- (g) The program and regulations provided for in this ordinance shall be made available for public inspection at the office of the County's Department of Environmental and Development Services.

Sec. 10-4. Conflicting requirements.

- (a) The terms, conditions and provisions of this chapter shall in no way alter, diminish or change the terms, conditions or provisions of any other ordinance of the county.
- (b) In the case of any conflict between any term, condition or provision of this chapter with any term, condition or provision of any other ordinance, the more restrictive term, condition or provision shall prevail.

- (c) In the case of any conflict between any term, condition or provision of this chapter with any other term, condition or provision contained elsewhere in this chapter, the more restrictive term, condition or provision shall prevail.

Secs. 10-5—10-10. Reserved.

ARTICLE II. PLANS, PERMITS, STANDARDS AND INSPECTIONS

Sec. 10-11. Regulated land-disturbing activities; contents, submission and approval of plans

- (a) Except as provided herein, no person may engage in any land-disturbing activity until he has submitted to the County Department of Environmental and Development Services an erosion and sediment control plan ("plan") for the land-disturbing activity and such plan has been approved by the plan-approving authority.

Where land-disturbing activities involve lands under the jurisdiction of more than one local erosion and sediment control program, an erosion and sediment control plan, at the option of the applicant, may be submitted to the Virginia Soil and Water Conservation Board for review and approval rather than to each jurisdiction concerned.

Where the land-disturbing activity results from the construction of a single-family detached dwelling, an "agreement in lieu of a plan" may be substituted for an erosion and sediment control plan if executed by the plan-approving authority.

- (b) The standards contained within the Virginia Erosion and Sediment Control Regulations and the *Virginia Erosion and Sediment Control Handbook* are to be used by the applicant when making a submittal under the provisions of this ordinance and in the preparation of an erosion and sediment control plan. The plan-approving authority, in considering the adequacy of a submitted plan, shall be guided by these same standards, regulations and guidelines. When the standards vary between the publications, the Virginia Erosion and Sediment Control Regulations shall take precedence. In addition to the above standards, the following requirements shall be met for plan submissions:
- (1) A minimum of four copies of the erosion and sediment control plan shall be submitted for review and approval.
 - (2) Plan sheet size shall be 24 inches by 36 inches.
 - (3) Plans shall be prepared to an appropriate engineer's scale and the scale shall be shown on the plan. Scale shall be no smaller than one inch equal to 100 feet.
 - (4) The name of the project, the developer, the owner of the property and the name, address, and telephone number of the person or firm preparing the plan shall be listed on the plan.
 - (5) The location and extent of any transitional buffers, infiltration yards, environmental management areas (includes Chesapeake Bay preservation areas), floodplain management areas, historic resources management areas, tourist corridor management areas or watershed management and protection areas that may be required by the application of chapter 24.1 (zoning ordinance) of this code shall be shown on the plan.
 - (6) The location, type, extent, owner's name and recordation information of any existing or proposed landscape, conservation, preservation, drainage, utility, ingress/egress or similar easements on the subject property or adjoining the property shall be shown on the plan.
 - (7) Trees proposed for preservation, their approximate drip line and the location, type and extent of tree protection devices and measures to assure preservation during clearing and subsequent development activity shall be shown on the plan.

CODE OF THE COUNTY OF YORK, VIRGINIA

CHAPTER 10

- (8) The sequence of construction outlining the installation and removal of erosion and sediment control measures in relationship to the development of the site shall be on the plan.
- (9) An itemized cost estimate detailing the expected total construction costs of all erosion and sediment control measures associated with the plan shall be prepared and submitted along with the plan.
- (c) The plan-approving authority shall, within 45 days, approve any such plan, if it is determined that the plan meets the requirements of the local control program, and if the person responsible for carrying out the plan certifies that he or she will properly perform the erosion and sediment control measures included in the plan and will conform to the provisions of this ordinance.
- (d) The plan shall be acted upon within 45 days from receipt thereof by either approving said plan in writing or by disapproving said plan in writing and giving specific reasons for its disapproval.

When the plan is determined to be inadequate, the plan-approving authority shall specify such modifications, terms and conditions that will permit approval of the plan. If no action is taken within 45 days, the plan shall be deemed approved and the person authorized to proceed with the proposed activity.
- (e) Consistent with Code of Virginia section 10.1-563(B), as a prerequisite to engaging in any land-disturbing activities as shown on an approved plan, the person responsible for implementing the erosion and sediment control plan shall provide the name of a Responsible Land Disturber, who will be in charge of and responsible for carrying out the land disturbing activity in accordance with the approved plan. Failure to provide the name of an individual holding a certificate of competence prior to engaging in land-disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this chapter.
- (f) An approved plan may be changed by the plan-approving authority when:
 - (1) The inspection reveals that the plan is inadequate to satisfy applicable regulations; or
 - (2) The person responsible for carrying out the plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this ordinance, are agreed to by the plan-approving authority and the person responsible for carrying out the plans.
- (g) When land-disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of an erosion and sediment control plan shall be the responsibility of the owner.
- (h) Consistent with Code of Virginia section 10.1-563(D), electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline companies or railroad companies shall file general erosion and sediment control specifications annually with the Virginia Soil and Water Conservation Board for review and approval. The specifications shall apply to:
 - (1) Construction, installation and maintenance of electric, natural gas and telephone utility lines and pipelines; and
 - (2) Construction of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of the railroad company.

Individual County approval of separate projects as described in (1) and (2), above, shall not be required provided that Virginia Soil and Water Conservation Board approved specifications are followed. Projects not described in (1) and (2) above shall comply with the requirements of this ordinance.
- (i) State agency projects are exempt from the provisions of this chapter except as provided for in the Code of Virginia, section 10.1-564.

(Ord. No. 03-15, 6/17/03)

Comment [JS2]: Page: 1
Section 10-4.H of model

Sec. 10-12. Required permits.

- (a) No person may engage in any land-disturbing activity, nor shall any building permit be issued by the County's building official, until such person shall have acquired a land-disturbing permit and have paid the fees and executed a secured performance agreement, unless the proposed land-disturbing activity is specifically exempt from the provisions of this ordinance.
- (b) The county administrator may require the owner of property which has been designated by the county administrator as an erosion impact area to prepare and submit an erosion and sediment control plan for review and approval; and upon approval of the erosion and sediment control plan for the erosion impact area, the county administrator may require the owner of the property to obtain a land-disturbing activity permit, and to fully implement the approved plan.
- (c) No permit which authorizes land-disturbing activities shall be issued until the applicant submits with his application an approved erosion and sediment control plan and certification that the plan will be followed.

Comment [JS3]: Page: 1
Stated in Section 10-11.A, which is from 10-4.A of the model

Sec. 10-13. Plan review and inspection fee.

Any request for review and approval of an erosion and sediment control plan shall be accompanied by the payment of a plan review and inspection fee. Such fee shall be in the amount fixed, and as may be thereafter changed from time to time, by resolution adopted by the board of supervisors.

Sec. 10-14. Issuance of permit and surety requirements.

- (a) No permit for activities approved under this chapter shall be issued until the applicant has executed a performance agreement secured by a cash escrow, letter of credit, or any combination thereof, or other suitable legal arrangement, in a form approved by the county attorney. Such cash escrow or letter of credit shall be in an amount acceptable to the county administrator and shall be sufficient to ensure that measures may be taken by the county, at the applicant's expense, should he fail, after proper notice and within the time specified, to establish and maintain appropriate conservation measures required of him as a result of his land-disturbing activities. The amount of the security for performance shall not exceed the total of the estimated cost to initiate and maintain appropriate conservation action based on unit price for new public or private sector construction in the locality and a reasonable allowance for estimated administrative costs and inflation which shall not exceed twenty-five percent of the cost of the conservation action. Should it be necessary for the county to take such conservation action, the county may collect from the applicant any costs in excess of the amount of the surety held. Nothing shall prevent the county from exercising such authority to prevent or remedy damages to other property, public or private, caused by an applicant's regulated activities. The county administrator may waive the requirement for surety if the surety amount is determined to be less than one thousand dollars (\$1,000.00) and the land-disturbing activity is associated with the preparation for a single-family detached dwelling.
- (b) Within sixty (60) days of the completion of the land-disturbing activity, as indicated by the issuance of a certificate of completion pursuant to section 10-17 of this chapter, such cash escrow or letter of credit, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated as the case may be.
- (c) These requirements are in addition to all other provisions relating to the issuance of permits and are not intended to otherwise affect the requirements for such permits.
- (d) No permit shall be issued which would authorize any land-disturbing activity for any development which requires site plan or subdivision plan review prior to the approval of the site or subdivision plan except upon the approval of the county administrator where it is determined after initial reviews of the development proposal that the only unresolved issues preventing site plan or subdivision plan approval are those which will not affect the location and extent of structures, parking areas or roads, or in accordance with subsection (f) below.

Comment [JS4]: Revised to bring into conformance with the language of section 10-5.E of the model

- (e) No permit shall be issued which would authorize any land-disturbing activity within any area included within a recorded or proposed landscape preservation or similar easement, unless the land-disturbing activity is deemed necessary by the county administrator for the construction, installation or maintenance of storm drainage facilities or utilities operated and maintained by the county.
- (f) Where a commercial or industrial site in excess of five (5) acres is proposed to be developed to accommodate multiple lots and/or buildings under separate ownership or control, the county administrator may, notwithstanding the provisions of subsection (d) above, authorize a land-disturbing activity in advance of approval of site plans for the individual commercial or industrial establishments upon demonstration by the property owner, to the satisfaction of the county administrator, that the topographic relief of the property will require extensive cut, fill and grading to prepare the site for multiple lot or building development and that such site preparation prior to plan approval is necessary and consistent with the objectives and policies of the county.

The following conditions shall be required by the county administrator in conjunction with such an authorization and shall be satisfied prior to issuance of any land-disturbing activity permits:

- (1) A plan of development for the roads, drainage facilities and main-line utilities that will serve the proposed development and its multiple building sites shall be prepared, submitted and approved in accordance with all applicable site plan or subdivision development plan requirements.
- (2) All work shall be performed in strict accordance with an approved erosion and sediment control plan that has been prepared and approved in accordance with all applicable standards.
- (3) The construction of all streets, main-line utilities, drainage improvements and similar infrastructure, both public and private, as shown on the approved plan, shall be guaranteed for construction by an agreement and secured by a letter of credit or cash escrow in an amount approved by the county administrator and county attorney. The agreement shall require that said construction shall commence within one year of the initial date of authorization of the land-disturbing activity and shall be in accordance with properly submitted and approved plans.
- (4) Reforestation of the property, or portions thereof as deemed appropriate by the county administrator, with approximately the same numbers and species of trees as were located on the property prior to clearing shall be guaranteed by an agreement and secured by a letter of credit or cash escrow in an amount approved by the county administrator and in such form as may be approved by the county attorney. Said reforestation shall be required unless a certificate of occupancy for at least one (1) commercial or industrial establishment is issued within three (3) years of the initial date of authorization of the land-disturbing activity.
- (5) No clearing shall be permitted within fifty feet (50') of any property line, except to permit the construction of approved infrastructure improvements, nor within any other portion of the site determined by the county administrator to be nonessential to preparation of the site for development.
- (6) The county administrator shall require the submission of any additional plans, plats, certifications or supporting materials deemed to be necessary and appropriate to apply and enforce this subsection.

Sec. 10-15. Term of permit.

- (a) A permit issued under this article shall be valid for a period of one (1) year; provided, however, it may be extended for an additional one-year period, by written approval of the county administrator, upon receipt of evidence of reasonable progress toward completion of the approved project and compliance with all conditions of approval.
- (b) If land disturbing activities cease for more than one hundred-eighty (180) days, or if the permittee fails to initiate land disturbing activities within one hundred-eighty (180) days, of the date of issuance

Comment [JS5]: Page: 1
Is in state law 4VAC50-30-80.B, contained in
Chapter 8, page 26 of E&S manual

of a land disturbing activity permit, then the land disturbing activity permit and plan shall become void.

Sec. 10-16. Monitoring, reports, inspections, stop work orders and revocation of permits.

- (a) The county may require the person responsible for carrying out the plan to monitor the land-disturbing activity. The person responsible for carrying out the plan will maintain records of all inspections and maintenance, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation.
- (b) The county administrator shall periodically inspect the land-disturbing activity to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation. Unless the county establishes and follows an alternative inspection program approved by the Virginia Soil and Water Conservation Board, inspections shall be provided during or immediately following initial installation of erosion and sediment controls, at least once in every two-week period, within 48 hours following any runoff producing storm event, and at the completion of the project prior to the release of any performance bonds. The owner, permittee, or person responsible for carrying out the plan shall be given notice of the inspection.

If the county administrator determines that there is a failure to comply with the plan, notice shall be served upon the permittee or person responsible for carrying out the plan by registered or certified mail to the address specified in the permit application or in the plan certification, or by delivery at the site of the land-disturbing activities to the agent or employee supervising such activities.

The notice shall specify the measures needed to comply with the plan and shall specify the time within which such measures shall be completed. Upon failure to comply within the specified time, the permit may be revoked and the permittee or person responsible for carrying out the plan shall be deemed to be in violation of this ordinance and shall be subject to the penalties provided by this ordinance.

- (c) Upon determination of a violation of this ordinance, the county administrator may, in conjunction with or subsequent to a notice to comply as specified in this ordinance, issue an order requiring that all or part of the land-disturbing activities permitted on the site be stopped until the specified corrective measures have been taken.

If land-disturbing activities have commenced without an approved plan or an approved agreement in lieu of a plan, the county administrator may, in conjunction with or subsequent to a notice to comply as specified in this chapter, issue an order requiring that all of the land-disturbing activities be stopped until an approved plan or any required permits are obtained.

Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, or where the land-disturbing activities have commenced without an approved plan or any required permits, such an order may be issued without regard to whether the permittee has been issued a notice to comply as specified in this ordinance. Otherwise, such an order may be issued only after the permittee has failed to comply with such a notice to comply.

The order shall be served in the same manner set out in subsection (b), above, for a notice to comply, and shall remain in effect for a period of seven days from the date of service pending application by the enforcing authority or permit holder for appropriate relief to the circuit court for the county.

If the alleged violator has not obtained an approved plan or any required permits within seven days from the date of service of the order, the county administrator may issue an order to the owner requiring that all construction and other work on the site, other than corrective measures, be stopped until an approved plan and any required permits have been obtained. Such an order shall be served upon the owner by registered or certified mail to the address specified in the permit application or the land records of the county.

The owner may appeal the issuance of an order to the circuit court for the county.

Comment [JS6]: See below which is in taken from section 10-6 of the model

Any person violating or failing, neglecting or refusing to obey an order issued by the county administrator may be compelled in a proceeding instituted in the circuit court for the county to obey same and to comply therewith by injunction, mandamus or other appropriate remedy. Upon completion and approval of corrective action or obtaining an approved plan or any required permits, the order shall immediately be lifted.

Nothing in this section shall prevent the county administrator from taking any other action authorized by this ordinance.

- (d) Revoked land-disturbing activity permits shall be reinstated only after the permittee has complied with the provisions specified in the notice to comply, and only after the permittee has implemented and maintained proper erosion and sediment control measures in accordance with the approved plans and/or in accordance with the directions provided by the county administrator, and only if the permittee has complied with all of the terms and conditions under which the original land-disturbing activity permit was issued. In addition, the permittee must apply for reinstatement of the revoked land-disturbing activity permit. An inspection and review fee shall accompany the permittee's written request for the reinstatement of the revoked land-disturbing activity permit. The reinstatement inspection and review fee shall be equivalent to the original land-disturbing activity permit inspection and review fee. Furthermore, if the county has drawn upon the permittee's land-disturbing activity performance surety funds, and the county has expended all or a portion of the permittee's surety funds in an effort to correct the erosion and sediment control violations, then the permittee shall be required to provide an additional surety equivalent to the expended portion of the original surety funds.

Sec. 10-17. Certificate of completion of land-disturbing activity.

Upon completion of the land-disturbing activity in accordance with the approved plan, the county administrator shall issue a certificate of completion.

Comment [JS7]: This is stormwater related and does not apply to E & S

Comment [JS8]: This is stormwater related and does not apply to E & S

Secs. 10-18—10-25. Reserved.

ARTICLE III. VIOLATIONS, PENALTIES AND APPEALS

Sec. 10-26. Violations of chapter—Generally.

- (a) Any person who engages in or causes any regulated land-disturbing activity, without first receiving approval for such activity as prescribed by this chapter, shall be in violation of this chapter.
- (b) Any person who violates any condition of any authorized land-disturbing activity or exceeds the scope of approval of any authorized activity or who fails to comply with any other provision of this chapter shall be in violation of this chapter.

Sec. 10-27. Penalties, injunctions and other legal actions.

- (a) Any person who violates any provision of this chapter shall, upon a finding of the district court of the county, be assessed a civil penalty. The civil penalty for any one violation shall be not less than \$100.00, nor more than \$1,000. Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total of \$10,000, except that a series of violations arising from the commencement of land-disturbing activities without an approved plan or an approved agreement in lieu of a plan for any site shall not result in civil penalties which exceed a total of \$10,000.

Comment [JS9]: Covered in E&S handbook (Chapter 8, page 10) and in state law 10.1-566.A

Comment [JS10]: Modified to match the model's section 10-7 with the optional Civil Fines Section

- (b) The county administrator, or the owner of property which has sustained damage or which is in imminent danger of being damaged, may apply to the circuit court of the county to enjoin a violation or a threatened violation of this ordinance, without the necessity of showing that an adequate remedy at law does not exist. However, an owner of property shall not apply for injunctive relief unless (i) he has notified in writing the person who has violated the ordinance, and the county administrator, that a violation of the ordinance has caused, or creates a probability of causing, damage to his property, and (ii) neither the person who has violated the ordinance nor the county administrator has taken corrective action within fifteen days to eliminate the conditions which have caused, or create the probability of causing, damage to his property.
- (c) Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting, or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000 for each violation. A civil action for such violation or failure may be brought by the county.
- Any civil penalties assessed by a court shall be paid into the treasury of the county, except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury.
- (d) With the consent of any person who has violated or failed, neglected or refused to obey any regulation or condition of a permit or any provision of this chapter, the county may provide for the payment of civil charges for violations in specific sums, not to exceed \$2,000. The county administrator shall establish a schedule enumerating the violations and the associated civil charges. Such civil charges shall be instead of any appropriate civil penalty.
- (e) The County Attorney shall, upon request, take legal action to enforce the provisions of this ordinance.
- (f) Compliance with the provisions of this ordinance shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion, siltation or sedimentation that all requirements of law have been met, and the complaining party must show negligence in order to recover any damages.
- (g) Nothing herein shall prevent the County Administrator from or be a prerequisite to the County Administrator taking any other action allowed by law or equity to remedy noncompliance with this Chapter.
- (Ord. No. 10-16, 8/17/10)

Sec. 10-28. Appeals and judicial review.

Final decisions of the county under this ordinance shall be subject to review by the circuit court of the county, provided an appeal is filed within 30 days from the date of any written decision adversely affecting the rights, duties, or privileges of the person engaging in or proposing to engage in land-disturbing activities.

Comment [JS11]: Modified to match the model's section 10-8